

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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FARIS ABDUL-MATIYN,

Plaintiff,

v.

9:06-CV-1503  
(GTS/DRH)

PETE HANMER, CNYPC Primary Therapist;  
TOM MURPHY; and JEFF NOWICKI,

Defendants.

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APPEARANCES:

OF COUNSEL:

FARIS ABDUL-MATIYN

Plaintiff, *Pro Se*

P.O. Box 210130

Brooklyn, New York 11221

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the State of New York  
Counsel for the State Defendants  
The Capitol  
Albany, New York 12224

CHRISTINA L. ROBERTS-RYBA, ESQ.

HON. GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court in this prisoner civil rights action, filed by Faris Abdul-Matiyn ("Plaintiff") against three employees of the Central New York Psychiatric Center ("Defendants") pursuant to 42 U.S.C. § 1983, is Plaintiff's renewed pretrial motion for a change of venue of this action to the Eastern District of New York. (Dkt. No. 128.) Plaintiff's renewed motion is denied for the two alternative reasons set forth in the Court's Decision and Order of January 21, 2011. (Dkt. No. 126, at 6-8). The Court would add only that—setting aside the fact that Plaintiff's failure-to-pray claim against Defendants Pete Hanmer, Tom Murphy and Jeff

Nowicki could not have been brought in the Eastern District—nowhere in his renewed motion has Plaintiff identified the underlying medical condition that allegedly prevents him from traveling to Syracuse, other than through an oblique reference to diabetes. (Dkt. No. 128, ¶¶ 4-6, 26) Nor has Plaintiff adduced any medical records, or affidavits of his medical care providers, corroborating his alleged inability to travel. (*See generally* Dkt. No. 128.)

Plaintiff is again advised that the trial in this action shall commence before the undersigned at 9:00 AM on Monday, March 7, 2011, on the Third Floor of the Federal Building in Syracuse, New York. (Dkt. No. 124.) Plaintiff is further advised that, should he fail to appear for trial, the Court will entertain a motion by the three above-captioned Defendants (and Defendant Steve Capolo, should Defendants consent to the Court’s reinstatement of Plaintiff’s claims against him) to dismiss Plaintiff’s claims against them for failure to prosecute and/or failure to comply with a Court Order, pursuant to Fed. R. Civ. P. 41(b). Finally, Plaintiff is advised that the Court will grant that motion if it finds that the five factors articulated by the Second Circuit in *Hevner v. Village East Towers, Inc.*, No. 07-5608, 2008 WL 4280070, at \*1-2 (2d Cir. Sept. 18, 2008), weigh in favor of dismissal.<sup>1</sup>

**ACCORDINGLY**, it is

**ORDERED** that Plaintiff’s renewed pretrial motion for a change of venue of this action to the Eastern District of New York (Dkt. No. 128) is **DENIED**; and it is further

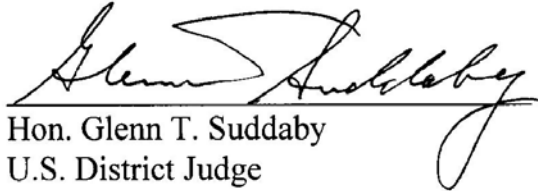
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<sup>1</sup> Of particular interest to the Court would be whether Defendants have shown, through evidence, that they have suffered, and would continue to suffer, actual prejudice as a result of Plaintiff’s delay.

**ORDERED** that Defendants still have until **FEBRUARY 4, 2011**, by which to respond by letter to whether the Court should *sua sponte* reconsider its dismissal of Defendant Steve Capolo in the interest of justice and judicial efficiency; and it is further

**ORDERED** that the clerk of the court shall serve a copy of this order on plaintiff via regular mail and also by certified mail, return receipt requested.

Dated: February 2, 2011  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
U.S. District Judge